

Meeting:	Cabinet
Meeting date:	Thursday 26 October 2017
Title of report:	Passenger Transport Services - Dynamic Purchasing System
Report by:	Cabinet member transport and roads

Classification

Open

Decision type

Key

This is a key decision because it is likely to result in the council incurring expenditure which is, or the making of savings which are, significant having regard to the council's budget for the service or function concerned. A threshold of £500,000 is regarded as significant.

This is a key decision because it is likely to be significant having regard to: the strategic nature of the decision; and / or whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality (two or more wards) affected.

Notice has been served in accordance with Part 3, Section 9 (Publicity in Connection with Key Decisions) of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Wards affected

Countywide

Purpose and summary

To agree the future procurement model for passenger transport services.

The current frameworks are due to terminate in July 2018. They provide an umbrella agreement for the provision of all passenger transport services commissioned by the council through call-off contracts. It is proposed to replace these frameworks with a Dynamic Purchasing System (DPS). Under the new arrangements, the contracting of individual services would continue in a similar way (call-off contracts/mini competitions conforming with the council's constitution). The benefit of

a DPS is that new operators which meet the framework criteria can join at any time after it has been adopted and it will need to be operated on a purely electronic basis which can streamline the procurement process and may also improve competition. Under the current framework approach a new framework is required each time a new operator wishes to do business with the council, and the tendering process often mixes electronic and paper based approaches.

Recommendation(s)

That:

- (a) a dynamic purchasing system be implemented to be effective from the termination of the current Passenger Transport Frameworks on 10 July 2018; and**
- (b) the assistant director environment and place be authorised to take all operational decisions necessary to establish and maintain the passenger transport dynamic purchasing system.**

Alternative options

1. The Frameworks could be replaced with a new Framework. This is not recommended as the Dynamic Purchasing System (DPS) would provide greater flexibility, enabling new operators to join at any time in the future and tender for work.
2. Not to continue with a framework or DPS agreement and tender all new passenger transport contracts on an individual basis. This is not recommended as the establishment of an umbrella agreement, which ensures a group of providers have been subject to a pre-qualifying assessment to confirm that they are capable of undertaking work, reduces the overall burden on the procurement process and enables the council to tender its services more efficiently and in a timely manner. Establishing an umbrella agreement such as a framework or DPS also means that subsequent contracts can be tendered without requiring OJEU notices in the event that individual values are above the threshold and ensures compliance with rules relating to aggregation of contracts.

Key considerations

3. A new Framework Agreement for Passenger Transport Services was introduced in May 2014. This agreement followed the integration of the council's passenger transport services comprising public transport, school transport (mainstream and SEN), college transport and adult social care transport and enabled transport providers to tender for these services. Two subsequent frameworks were established to enable additional operators to tender for work. All three frameworks were set up to be co-terminus in July 2018.
4. A framework provides an umbrella agreement so that providers are approved ahead of subsequent contracting opportunities confirming that they can meet the basic requirements of the services to be contracted. The total annual value of contract work undertaken for passenger transport services is approximately £6m relating to around 210 contracts.

5. A DPS will require that all contracting processes are carried out electronically using an appropriately secure and accessible system which would not impact the ability of local providers to bid for work. The council's existing ProContract e-procurement system is suitable for this purpose.
6. A programme of engagement and support will be delivered by council officers within existing resources to ensure that all prospective operators are assisted in complying with this aspect of the DPS should they wish to join.
7. In order to set up the DPS the council must place a call for competition in the OJEU allowing providers at least 30 days to respond. The notice will clarify the approximate quantities and annual value of contracts so that providers are made aware of the scale of work which would be available to them through joining the DPS.
8. The DPS is likely to identify a number of different service categories such as public services (local bus), mainstream school services and smaller vehicle transport such as door to door transport for children with SEN and adults with disabilities which providers can register to deliver services for. This will allow the council to invite only those providers who are registered under a specific work category to tender for contracts under the further competition process.
9. In preparing for the further competition process, the council will need to review its transport procurement documents as these will form a key component of the process. This will include standard call-off terms and conditions of contract, specifications for service and other relevant documents.
10. A programme has been developed for establishing the DPS which includes the following key stages:
 - a. Pre-tender planning (Aug 2017 – Jan 2018)
 - i. Establish project team and specialist support (legal services)
 - ii. Consider category options
 - iii. Keep providers informed and invite to presentation/Q&A which will include establishing any support requirements re moving to e-tendering (5 sessions Jan 2018)
 - b. Develop Invitation to Tender (Oct 2017 – Feb 2018)
 - i. Develop service specification(s)
 - ii. Develop evaluation criteria
 - iii. Drafting tender documents and OJEU notice
 - c. Issue OJEU Notice (Feb – Apr 2018)
 - i. Clarification period – respond to potential tenderers
 - ii. Submission Deadline
 - d. Evaluate tenders (quality, finance etc, clarifications sought if required) (May 2018)

e. DPS commencement (July 2018)

11. It should be noted that the process of establishing a DPS does not in itself result in the direct contracting of any work. As an umbrella agreement it provides the council with a pre-registered group of providers amongst which work would be subsequently tendered. The process of tendering work through the DPS (once established) will follow the council's constitution and its established contract procedure rules.

Community impact

12. Whilst the move to a DPS will not result in a direct change to the service procured for passenger transport it will establish a more flexible umbrella agreement which permits new providers to join at any point in the future. As such, the establishment of the DPS will indirectly support the council's key strategic priorities:

- f. Enable residents to live safe, healthy and independent lives – support for adult social care transport and subsidised bus services (affording free transport for older people and people with disabilities) enables residents to continue to live independently.
- g. Give young people a great start in life – support for school transport (mainstream, SEN and college) helps young people across the county to access education.
- h. Support growth of our economy – support for the subsidised bus network enables people to access work and retailing and also helps reduce traffic congestion. The DPS will enable local providers to continue to compete for council business and provide greater flexibility to other new providers to join the DPS on an ongoing basis.
- i. Value for money – moving to a more flexible agreement should ensure easier access to providers and potentially increase competition. E-procurement may also bring financial benefits by making tendering more efficient.

13. All other aspects of service delivery including health and safety and duty of care with respect to transported clients will be assured through the standard terms and conditions of contracts and individual specifications for work. There is existing documentation which covers these issues and these will be subject to review prior to issuing updated documentation as part of the DPS call for competition.

Equality duty

14.

Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;

- (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
15. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. As this is a decision on back office functions, we do not believe that it will have an impact on our equality duty.

Resource implications

16. Unlike the current framework agreements there is not requirement to specify a time period for the DPS and it can be set up on the basis that it will have an unlimited duration. As such when the call for competition is advertised through the OJEU it will be important to outline the typical annual value of contracts which might subsequently be tendered through the DPS. This is around £6m per annum.
17. Excluding the legal expertise, establishment of a DPS can be met from within existing staff resources. This will include staff time required to:
- a. prepare documentation relating to the OJEU call for competition including a review of contract documentation;
 - b. support and engagement for providers to inform them of the process and the opportunity to join the DPS and what will be required in registering;
 - c. Evaluation of tenders received to join the DPS
 - d. Staff training to ensure subsequent procurement using the DPS and ProContract e-procurement system is operated correctly.
18. Whilst it is anticipated that a DPS may generate greater levels of competition and potentially better value it is not possible to predict this with any certainty.
19. The ongoing operational costs associated with operating a DPS will be to ensure that staff resources are available to process any subsequent requests to join the DPS. As a standardised process it is not anticipated that this will be accommodated within existing staff resources.
20. As with the current framework agreements, staff time will continue to be required for procuring work and monitoring contracts in accordance with the terms of joining the DPS and standard terms and conditions of contracts and specifications.

Legal implications

21. Section 63 of the Transport Act 1985 sets out the council's duties to secure provision of such public passenger transport services as considered appropriate to meet requirements within the county which would not otherwise be met. This duty must be carried out while having regard to the council's duties to provide home to school transport.
22. The council's statutory duty to provide home to school transport is set out in Section 508B of the Education Act 1996 and the DFE statutory guidance for local authorities on home to school travel and transport issued in July 2014 (and updated in December

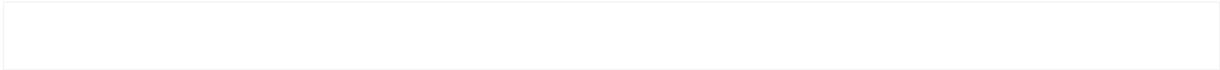
2016). This duty requires the council must make such travel arrangements as considered necessary to facilitate attendance at school for eligible children (as defined in Schedule 35B of the Act). The council's home to school transport policy (revised in June 2017) sets out details of provision and eligibility for children of compulsory school age in Herefordshire.

23. The provisions set out in this report will ensure that the council is able to meet its statutory duties and comply with adopted policies to provide both passenger and home to school transport.
24. The procurement of the DPS will create a compliantly let Umbrella Agreement as required under the contract procedure rules.
25. To utilise the DPS a procedure for mini competitions must be complied with and will enable passenger and school transport contracts to be let with individual contracts being pulled from the system when a contract is awarded.
26. The delegation, in recommendation (b) for the procurement and award of contracts, to an officer is permissible and must only be carried out in accordance with the council's constitution and contract procedure rules

Risk management

27.

Risk / opportunity	Mitigation
<ul style="list-style-type: none"> • The DPS does not get established by July 2018 when the current frameworks terminate • Providers will not register for the DPS and there will be a reduction in competition for work. 	<ul style="list-style-type: none"> • A project plan has been developed which sets out sequence of actions and resources required to meet the required timescales for a new DPS. This will be monitored by a project board. • A best practice learning session is planned with colleagues from Cardiff City Council to check process and pick up hints and tips • There will be direct engagement sessions available to all current and prospective suppliers which will increase awareness around the process and assist with registration. Specific advice and support will be provided on the e-procurement elements of the new DPS. In addition, the DPS will enable free entry once it is established meaning that providers will be able to join at any point in the future.



Consultees

28. The views of Members and Group Leaders have been sought on this report and no comments have been received.

Appendices

29. None.

Background papers

30. None identified.